

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion Requested by:)	No. 86-001
Doreet Rotman, Harriet)	May 12, 1987
Breger, Tom Bush, Brian)	
Moore and)	
Father William Thom)	
)	

BY THE COMMISSION: We have been asked the following question by Doreet Rotman, Harriet Breger, Tom Bush, Brian Moore and Father William Thom, current or former members of the Hollywood Project Area Committee:

Are members of the Hollywood Project Area Committee "public officials" subject to the conflict of interest provisions of the Political Reform Act (the "Act")?^{1/}

CONCLUSION

Members of redevelopment project area committees are "public officials" who are subject to the Act's disclosure and disqualification provisions. With regard to disqualification, members of project area committees must disqualify themselves from participation in decisions of the project area committee only if the decision will have a reasonably foreseeable material financial effect on the member's economic interest which is distinguishable from the effect on members of the public within the redevelopment project area.

FACTS

The Hollywood Project Area Committee was created under provisions of the Community Redevelopment Law of the State of California. (Health and Safety Code Section 33000, et seq.).

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Health and Safety Code Sections 33385 and 33386 describe the formation and duties of project area committees as follows:

The legislative body of a city or county shall call upon the residents and existing community organizations in a redevelopment project area, within which a substantial number of low- and moderate-income families are to be displaced by the redevelopment project, to form a project area committee. The project area committee shall include, when applicable, residential owner occupants, residential tenants, businessmen, and members of existing organizations within the project area. The members of the committee shall serve without compensation....

If the project will not displace a substantial number of low- and moderate-income families the agency shall either call upon the residents and existing community organizations to form a project area committee or the agency shall consult with, and obtain the advice of, residents and community organizations as provided for project area committees in Section 33386 and provide such persons and organizations with the redevelopment plan prior to submitting it to the legislative body....

Health and Safety Code
Section 33385.

The redevelopment agency through its staff, consultants, and agency members shall ... consult with, and obtain the advice of, the project area committee concerning those policy matters which deal with the planning and provision of residential facilities or replacement housing for those to be displaced by project activities. The agency shall also consult with the committee on other policy matters which affect the residents of the project area....

Health and Safety Code Section
33386.

In the Bonfa Opinion, 2 FPPC Ops. 146 (No. 76-033; Oct. 5, 1976), the Commission concluded that as a general rule members of project area committees are not "public officials" within the meaning of the Act, and therefore, are not subject

to the Act's financial disclosure and disqualification provisions. (Section 87100, et seq.) The requestors of this opinion have asked whether amendments which have been made to the Community Redevelopment Law since the adoption of the opinion require reversal of Bonfa. (See, Stats. 1977, Ch. 797.)

ANALYSIS

The disqualification portion of the Act's conflict of interest provisions applies to all "public officials." (Section 87100.) Section 82048 defines the term "public official" to include "every member, officer, employee or consultant of a state or local government agency." Local government agency is in turn defined as a:

... county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

(Section 82041.)

Under this definition, the Hollywood Project Area Committee is a local government agency. Therefore, if persons who sit on the project area committee are "members, officers, employees or consultants" of the project area committee, they are public officials. (See Bonfa Opinion, supra, at 149.)

Individuals who serve on a project area committee are not "officers, employees or consultants" of the project area committee. (See Bonfa Opinion, supra, at 149.) Thus, the question is whether individuals who serve on the Hollywood Project Area Committee are "members" of the project area committee within the meaning of the Act. Regulation 18700(a)(1) defines the term "member" as follows:^{2/}

^{2/} With regard to the Act's financial disclosure provisions, conflict of interest codes are required to identify "designated employees" and assign to those designated positions appropriate categories of financial disclosure. (Section 87302.) The definition of the term "designated employee" excludes "... any unsalaried member of any board or commission which serves a solely advisory function." In determining whether a board is solely advisory, the presence or absence of decision-making power is an important factor. (Commission on Cal. State Gov. Org. and Econ. v. Fair Political Practices Com.)

(footnote continued next page)

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

In Bonfa, the Commission, after reviewing then existing provisions of the Community Redevelopment Law, concluded:

... a redevelopment agency may not adopt a plan until it has been submitted to the (project area committee) and consideration has been given to the recommendations of the (project area committee). However, the (project area committee's) recommendations are not binding on the redevelopment agency, which is free to adopt some, all, or none of the recommendations at its discretion. Moreover, if the redevelopment agency refuses to approve the recommendations of the (project area committee), this action cannot be appealed to any governmental agency or judicial body, or otherwise reviewed.

(footnote 2 continued)

(1978) 75 Cal. App. 3d 716, 721 [142 Cal. Rptr. 468].) Regulation 18700(a)(1) provides guidance in determining whether a board or commission possesses decision-making power. Accordingly, in addition to using Regulation 18700(a)(1) to determine whether certain individuals are subject to the Act's disqualification provisions, we have looked to Regulation 18700(a)(1) to determine whether various bodies are "solely advisory," thus exempting their members from the Act's financial disclosure provisions.

We think that under these circumstances it is clear that a (project area committee) does not make final governmental decisions, does not have the power to compel governmental decisions, and cannot prevent such decisions within the meaning of 2 Cal. Adm. Code Section 18700(a)(1). Accordingly, we conclude that a (project area committee) does not have "decision-making authority" within the meaning of the regulation and that its members, therefore, are not "public officials" by reason of their affiliation with the (project area committee).

Bonfa Opinion, supra, at p.150.

A footnote in Bonfa notes, however, that members of certain project area committees might still be considered to possess decision-making authority within the meaning of Regulation 18700(a)(1)(C). The Commission stated:

Whether the (project area committee) "makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment," and hence has decision-making authority, depends on the facts of each particular case.

Bonfa Opinion, supra at p.150,
fn.2.

In 1977, subsequent to the adoption of the Bonfa Opinion, various provisions of the Community Redevelopment Law relating to project area committees were amended. The most significant of these amendments involved Sections 33366 and 33385.5 of the Health and Safety Code.^{3/} As indicated above, the legislative body was free under previous law to adopt some, all, or none of the project area committee's recommendations regarding the redevelopment plan. Under the above-mentioned amendments, the legislative body still may reject the project area committee's recommendations. However, if a project area committee recommends against approval of a redevelopment plan or a proposed amendment to a redevelopment plan, the plan may

^{3/} In their letter, the requestors have also pointed out that Sections 33347.5, 33363, 33385, and 33386 of the Health and Safety Code affect the operation, powers and authority of project area committees. However, those sections have not been modified since the adoption of Bonfa.

be approved only if the city council or other legislative body adopts the plan or the proposed plan "by a two-thirds vote of its entire membership eligible and qualified to vote on such plan." (Health and Safety Code Sections 33366 and 33385.5.)

We believe that the statutory change requiring a two-thirds vote of the entire membership of the legislative body in order to approve a redevelopment plan for which the project area committee has recommended disapproval, makes the individuals who sit on project area committees "members" of local government agencies. Accordingly, the Bonfa Opinion is hereafter disapproved.

Generally, actions may be taken by a legislative body based upon a majority vote. (4 McQuillin, Municipal Corporations, Section 13.31b, p. 553.) Only acts regarded as of more than ordinary importance may require more than a majority vote. (4 McQuillin, supra, Section 13.31c, p. 555.) For example, emergency measures may be adopted only by a 4/5 vote of a city council. (Section 36937(b).) Certain balances in appropriations for contingencies may be made available for appropriation only by a 4/5 vote of a board of supervisors. (Section 29130.) A city may transfer its waterworks system to a municipal water district only by a 4/5 vote of its city council. (Section 38751.)

In the present situation, Health and Safety Code Sections 33366 and 33385.5 require not just two-thirds of a legal quorum, but "two-thirds vote of its entire membership eligible and qualified to vote on such plan" in order to approve a plan which the project area committee has recommended disapproving. Thus, if only four of five members of a legislative body are present for the vote, the plan could be approved only upon a unanimous vote of the body.

At the time Bonfa was adopted, the legislative body was free to ignore the recommendations of the project area committee. It is apparent that the statutory changes give the project area committees' recommendations a substantial amount of impact. Subsection (C) of Regulation 18700(a)(1) provides that a board or commission possesses decision-making authority if its recommendations are, and over an extended period of time have been, regularly approved without amendment or modification by another governmental agency. The concept of this regulation is that if the recommendations of a body have a significant impact upon the ultimate outcome of a decision, the body is considered to possess decision-making authority. The regulation provides that an assessment of the impact of a body's recommendations is to be made by analyzing the extent to

which its recommendations have been followed in the past. With project area committees, no such analysis of the past is necessary. The statutory changes assure that recommendations of project area committees will often be approved without significant amendment. As such, we believe project area committees possess decision-making authority within the meaning of Regulation 18700(a)(1)(C).

Even if we were to conclude that project area committees do not possess decision-making authority, Regulation 18700(a)(1) provides that the term "member" is not limited to members of boards or commissions with decision-making authority. Thus, individuals may be "members" of a local government agency within the meaning of the regulation without possessing decision-making authority as described in subsections (a)(1)(A), (B) and (C).

In reaching the conclusion that individuals who sit on project area committees are "members" of local government agencies we are cognizant of several general provisions of the Act. Section 81001(b) provides:

(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

Section 81002(c) provides:

(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.

Section 81003 provides:

This title should be liberally construed to accomplish its purposes.

The statutory changes which have occurred since we adopted Bonfa have substantially increased the power of project area committees. The recommendations made by project area committees involve issues which will have a material financial effect on many individuals and businesses. The Act is intended to assure that such decisions are made in an impartial manner and free from bias.

Health and Safety Code Section 33388 requires the legislative body, upon recommendation of the project area committee, to provide funds as deemed adequate by the legislative body to fund a committee office, equipment and supplies, and to provide staff and legal counsel for the project area committee. Although not determinative, we believe this is another factor supporting the conclusion that individuals who sit on project area committees are "members" of a local government agency.

We recognize that project area committees are required to include residents, businesses, and members of organizations in the project area, many of whom will have financial interests in the project area. It has been argued that application of the Act to these individuals will result in wholesale disqualification of project area committee members from various decisions of the project area committee. However, disqualification is required only if it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from its effect on the public generally, on the official's economic interest. (Section 87103.)

Regulation 18703 provides:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

The purpose of the project area committee is to provide input from residents, businesses, and members of organizations in the project area regarding issues which affect persons in the project area. (Health and Safety Code Sections 33865 and 33386.) It is not the role of project area committee members to represent the interests of individuals outside of the project area. Thus, the "public" with respect to a project area committee is those persons in the project area.^{4/} Accordingly, members of project area committees are required to


^{4/} In the Legan Opinion, 9 FPPC Ops. 1 (No. 85-001; August 20, 1985), the Commission concluded, in the case of a land use decision to be made by the Santa Clara County Board of Supervisors, that the "public" would consist of the entire
(footnote continued next page)

disqualify themselves from participating in decisions which will materially affect their economic interests only if the effect of the decision will be distinguishable from the effect on all other persons in the project area or on a significant segment of the persons in the project area. For example, if persons owning businesses in the project area constitute a significant segment of the persons in the project area, project area committee members who own businesses in the project area are disqualified from participation in decisions of the project area committee only if the decision will have a material financial effect on their business which is distinguishable from other businesses in the project area.

We conclude today that members of project area committees are subject to the Act's disclosure and disqualification provisions. Because of our opinion in Bonfa, project area committee members up until now have not generally been included as designated employees in conflict of interest codes. Therefore, those who were not designated in a code, have not been subject to the requirements to file disclosure statements, and need not file statements for past years. Conflict of interest codes should now be created or amended to include project area committee members as designated employees.

Approved by the Commission on May 12, 1987.

Concurring: Chairman Larson, Commissioners Fenimore, Lee and Montgomery. Commissioner Roden was absent.



John H. Larson
Chairman

(footnote 4 continued)

county even though its primary land use jurisdiction is confined to the unincorporated areas of the county. In reaching the conclusion above, we do not alter the conclusion in Legan. In Legan, the board of supervisors represented all of the county's residents, not just residents of the unincorporated area. Boards of supervisors, county planning commissions and other similar bodies have county-wide jurisdiction. Members of the project area committee represent solely the interests of persons in the project area. The project area committee's jurisdiction is limited to solely the project area.